



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

The jurist in a global age

Citation for published version:

Walker, N 2017, The jurist in a global age. in R van Gestel, HW Micklitz & EL Rubin (eds), *Rethinking Legal Scholarship: A Transatlantic Dialogue*. Cambridge University Press, Cambridge, pp. 84-111.

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Early version, also known as pre-print

Published In:

Rethinking Legal Scholarship

Publisher Rights Statement:

This material has been published in *Rethinking Legal Scholarship: A Transatlantic Dialogue* edited by Rob van Gestel, HansW. Micklitz and Edward L. Rubin. This version is free to view and download for personal use only. Not for re-distribution, re-sale or use in derivative works. ©Rob van Gestel, Hans-W. Micklitz and Edward L. Rubin 2017.

Copyright information page:

http://assets.cambridge.org/97811071/30920/copyright/9781107130920_copyright_info.pdf

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



The Jurist in a Global Age

1. The Jurist in Question

Whom do we think we are talking to when we look out across the Law School lecture theatre or seminar room? Are we instructing trainees? Are we simply supplying apprentices with those basic tools of the trade, a knowledge of statutes, case-law, contractual forms and the like - their sources and location, their place within a broader system of law, their general content, the rudiments of their interpretation and the basics of their circumstances of application - that will equip them in due course to advise clients on the multifarious ways and means of the law? Surely that is at least part of what we are supposed to be doing. But are we also attempting something grander? Are we seeking in addition to cultivate 'jurists'?

The vagueness that surrounds the term 'jurist' is testimony to how unsure we are about what such a larger ambition would entail, if, indeed, such an ambition were at all feasible. But if 'jurist' is to mean anything of substance - if it is to be more than a mere 'honorific title'¹ by which we as professors and teachers seek to dignify others and (not least) ourselves - then its specification must begin from the premise that a life spent in or around the law involves more than offering ourselves as the uncritical instrument of our clients' wishes, whoever these clients are and whatever their wishes might be. Rather, the jurist, in this basic and most preliminary conception, assumes a broader responsibility to ponder the idea and practice of law in general as a potentially valuable, and, in any case, value-relevant form of human activity.

I will have much more to say about the idea of the jurist, and about different and sometimes competing conceptions of what it is to be and become a jurist today. But an initial concern, and one that will bring some coherence to our discussion of its various candidate meanings, is one of categorisation. For I want to argue that the juristic impulse negatively conceived - the basic 'anxiety',² ambition and determination to move beyond the narrowly client-centred conception of the practice of law, and beyond the educational horizons appropriate to that conception, in turn generates a range of different approaches to law's wider value-relevance, and so also to teaching and learning about what might be valuable in the law.

¹ R. Cotterrell, 'The Role of the Jurist: Reflections around Radbruch' (2013) 26 *Ratio Juris* 510-523

² M. Del Mar and C. Michelon (eds) *The Anxiety of the Jurist* (Farnham: Ashgate, 2013).

The first part of the essay will be taken up with an elaboration of that variety of sometimes-contending forces and considerations informing the role of the jurist, positively conceived.

In particular, I want to develop two interlaced sets of distinguishing factors. I begin by pursuing the longstanding if imprecise division of deep purpose and method between humanistic and social scientific visions of legal study as an intellectual activity that runs beyond the narrow template of professional knowledge acquisition.³ Whereas their very shared appreciation that there is more to legal learning than an elementary knowledge of the content and systemic structure of a particular legal order suggests that these two visions should be seen as complementary rather than conflicting, that simple point is often lost in the politics of legal education; and, in any case, even where a more embracing perspective is taken, questions of relative priority still arise, and so the distinction remains salient. Secondly, I seek to argue that for each broader vision there is an important set of internal divisions cutting across the basic distinction between humanities and social sciences, and in so doing also qualifying that basic distinction. This second variation involves a range of different practical orientations towards the idea and practice of law, namely *service*, *detached* and *critical* orientations. Overall, this produces a framework that indicates a number of different emphases within any more expansive conception of legal education and inquiry, in so doing exposing the various challenges and pressures and highlighting the conflicting considerations to which the juristic mind-set is subject.

In the second part of the essay, having made this preliminary diagnosis, I want to reassess the adequacy of this framework to changing conditions. I examine how the development of an increasingly global outlook in law's normative ordering (and in the contestation of that ordering), as well as in its professional organisation, underlines the significance of both humanist and social scientific methods and perspectives in legal education. And in so doing, the new global outlook also causes us to loosen or revise some of the distinctions - both of deep method and practical orientation - upon which our categorisation of the variation of the juristic enterprise in a traditionally state-centred legal world is based. The global jurist may, in the final analysis, remain no easier a category to pin down than that of the local jurist, no less controversial to specify, no less challenging a role in any such specification, and no less complex a curricular puzzle. Arguably, however, with the emergence of the jurist's new global role - or at least new role dimension - some of the starker divisions of the earlier scheme no

³ See e.g., D. Howarth, 'Is Law a Humanity (or is it more like Engineering)?' (2004) 3 *Arts and Humanities in Higher Education* 9-28; see also his *Law as Engineering: Thinking about what lawyers do* (Cheltenham: Edward Elgar, 2013); and see M.M. Siems and D. MacSithig, 'Why do we do what we do? Comparing Legal Methods in Five Law Schools Through Survey Evidence' (this volume)

longer hold, and we can observe some avenues of convergence of previously quite disparate horizons of thought and practice. What is more, consideration of the problems, possibilities and educational priorities associated with the role of the jurist in a global setting provides us with a clear window and a fresh perspective through which to renew our contemplation of the role of the jurist in general.

2. Disciplining the Study of Law

(a) Between the humanities and the social sciences

There is no bright-line division between the contemporary humanities and the social sciences. Nor should we expect there to be. Neither approach to knowledge and understanding was developed in contradistinction to the other. The humanities have a classical lineage, originally understood as an outgrowth of the liberal arts - as the set of skills appropriate to the Roman *liber* or freeman.⁴ But even in their recognisably modern form, as they gradually came to be understood as a predominantly scholarly rather than a practical pursuit, the humanities significantly pre-date the social sciences. And when the social sciences began to emerge in the 18th and 19th centuries their primary point of departure was not the long tradition of the humanities. Rather, as their name suggests, they developed as a counterpart to the rapidly developing natural sciences. For the social sciences were born of the attempt to put our investigation and understanding of the workings of the social world on a comparable footing to that of the workings of the material world. This was an enterprise, then, that sought such continuities as it could with the master sciences, but one that also acknowledged and explored the fundamental difference between the investigation of natural forces and that of human agency.

The quite different trajectories of development of the humanities and social sciences have produced criteria of distinction that are neither complete nor uncontroversial. In the most basic terms, the humanities study the products of human thought and feeling - of human culture in the round, and often in deep historical contemplation - so as to reveal the internal meaning of these products and what that might tell us about the human condition more generally. Their methods tend to be speculative, interpretive and reflective, their goal and purpose enhanced appreciation of what it is to be human, and, in more applied mode, greater wisdom in practical judgment born of that enhanced appreciation. The social sciences are concerned with

⁴ For a recent magisterial treatment, see R. Bods, *A New History of the Humanities: The Search for Principles from Antiquity to the Present* (L. Richard, trans.) (Oxford: OUP, 2014).

accounting for patterns of social belief and action in different settings. Their methods tend to be observational, explanatory and dispassionate, their goal and purpose the acquisition of greater knowledge of the causes and motivations of human behaviour and, in more applied mode, consideration of how changes in the causal or motivational background might affect and alter human behaviour.

The humanities tend to include cultural anthropology and ethnography, and often history itself, languages and linguistics, religion, literature, and philosophy. They also embrace theoretical reflection on creative writing, in the performing arts of music, dance and theatre, and in the visual arts of painting, sculpting and architecture. The social sciences normally include social, anthropology, physical anthropology, archaeology, economics, geography, political science, psychology, sociology and international relations. They may also cover history, linguistics, and more self-consciously applied behavioural disciplines such as industrial relations, social administration and public administration. There is much overlap between the two lists. Anthropology and history are as likely to be studied for what they tell us about human potentials, pathologies and predicaments in general as they are to generate objective knowledge of how particular groups of people generate and respond to particular constellations of social forces. Even sociology, the generally recognised queen of the social sciences, is marked by a pronounced internal distinction between a quantitative approach in search of generalizable causal explanations and a more qualitative approach whose methods and ambitions of deep interpretation are more resonant of the humanities.⁵

If we consider the study of law, expansively conceived, under the umbrella of the humanities-social sciences distinction, the picture becomes even untidier. Legal studies manifestly cross the boundary between the humanities and the social sciences. On the one hand, law is a cultural product - an artefact - its actual and its ideal meaning, both in its manifold particular applications and more generally, a matter of interpretive or speculative judgment and of reflection on deep tradition. To that extent the study of law is a fit subject for the humanities. It supplies both a window *outwards* to the nature and limits of the collective human capacity for practical reason in the face of the fragilities of the human condition, and a window *inwards* to a special living tradition and systemic resource for treating projects and problems of our common life. On the other hand, law traces or otherwise helps reveal or produce certain regularities - whether causalities or propensities - in social relationships. These regularities, and how they influence or are influenced by law, we may understand and theorise in terms of

⁵ An interpretive approach whose lineage can be traced directly to Max Weber, generally considered as one of the Founding Fathers of modern sociology.

political power and preference, economic motivation and incentive, psychological disposition or historical pathway. To that extent the study of law is a fit subject for the social sciences.

Yet law is not a 'pure' subject of the humanities, and certainly not a 'pure' social science. This is already superficially evident from the uncertain place of legal studies within the contemporary bureaucratic politics of higher education. In the organisation and funding of teaching and research by governments, universities and other bodies, law is sometimes characterised as one of the humanities, sometimes as a social science, and sometimes as intellectually *sui genesis* or as occupying an indistinct or intermediate position between the two.⁶ And if we dig deeper, while the 'impurity' manifests itself quite differently in the two cases, it derives from the same underlying source; namely the very orientation towards a professional body of knowledge and practice from whose limited focus and restrictive priorities the humanities and social sciences perspectives struggle to free themselves. What is more, some of the tensions and counter currents that arise in consequence of that struggle, as we shall see, also run in a similar direction.

(b) The prominence of the service orientation

(i) Law in the perspective of the humanities

Considered in the perspective of the humanities, the study of law as a source of insight into our collective capacity to manage the human condition and as a resource of that collective capacity has certain unusual and distinctive features. As already noted, many humanities are primarily concerned with reflection rather than practice. That is certainly true of history, of large areas of philosophy, of literary criticism and of the study of the performing and visual arts. Others, at least in part, although often a secondary part, may be conducive to participation in a general social practice. For example, theology or the study of language forms may cultivate and facilitate our participation in an independent living practice of religion or language.

The study of law goes further, involving a more intimate relationship to practical activity. As we have already observed, it relates to a specialist practice of 'lawyering', and, in many of its forms, *serves* participation in that specialist practice. That is to say, the study of law

⁶ The evidence of mixed treatment is all around us in our daily academic life. I work in a School of Law that is located in a College of Humanities and Social Science, but within that College my School stands quite apart from the larger School of Social and Political Sciences. One of the learned societies I am associated with, The British Academy, categorizes law as a social science, whereas another, the Royal Society of Edinburgh, treats law under a general head of Arts, Humanities and Social Sciences. The main humanities funding source, the Arts and Humanities Research Council, regards law as one of the humanities, while the main social sciences funding body, the Economic and Social Research Council, considers socio-legal studies within its remit.

is often in the service of a practice that, unlike the practice of language or religion, is not general within the community but is particular to a special occupational group, or at least requires investment in and commitment towards a distinct form of craft skill or expertise. The primary service given to participation in such specialist legal practice by those dedicated to the study of law is, of course, the academy-based preparation and cultivation of the skills of the participants in the specialist practice. In addition, it involves contributing to the body of knowledge that is the object of the specialism. That is to say, as well as servicing those learning the practice of law, legal scholarship and research, as it tends in a humanist direction, also services the body of legal doctrine that is the focus of their learning. In so doing, scholarship provides aid to those, in particular legal professionals, judges and legislative drafters, who as senior practitioners in the law cultivate and apply legal doctrine.

The role of expert legal scholarship of this kind has ranged from the modest to the ambitious, from textbook writing to the crafting of treatises, from the deferential to the assertive, from the disinterested to the engaged - from reportage, commentary and exposition, through advocacy and constructive suggestion, to the very occupation of the role of authoritative source of particular doctrinal rules or as systematisers and keepers of a particular doctrinal canon with which the term 'jurist' is most prestigiously associated.⁷ In its more creative and engaged modes, then, we find the most distinctive feature of legal scholarship conceived of as a humanist activity; namely, that the practice it services – the cultivation and application of legal doctrine - is not only the object of its teaching and study but also in some measure the product of its learning.

Clearly, then, there is much continuity between law understood as a narrow form of professional training, in which the service role is front and centre, and law understood under the sign of the humanities, in which the pull of the service orientation nevertheless remains strong. There is also, certainly, much added value. A humanities-based conception of law must also include, first, second-order reflection on the distinct character of law as a first-order interpretive practice. It must deal explicitly and from a general vantage point with the special kind of cultural product law is and the broad human purposes it seeks to serve; with the ways in which, as we have noted, it offers a window outwards to our broader capacity for practical reason and a window inwards to these general and distinguishing features of law, evidenced by our common legal heritage, as a special form of practical reason. This inquiry obviously brings in many of the topics familiar from legal philosophy, legal theory or jurisprudence syllabuses - the terminological variety itself a sign of methodological uncertainties and tensions surrounding

⁷ See e.g. J. Gordley, *The Jurists* (Oxford: OUP, 2013)

legal education and scholarship⁸ - from the search for generic or universal features of law, to an examination of law's basic ethical structure or purpose and its distinction from and relationship with other forms of normative order. This second-order reflection may also draw upon other of the humanities, in particular literature and history, as a source of insight into these large questions about the nature of law as a cultural product. Law in the perspective of the humanities must offer, secondly, the kind of education in engaged legal reasoning - in law as a first-order interpretive practice - that Paul Kahn talks about in his contribution to this volume.⁹ The cue is the irreducibility of legal norms and their deployment to a 'covering-law'¹⁰ conception of rules and rule application, and recognition of the unavoidable element of creative judgment in its on-going practice that law shares with all other cultural accomplishments that form the subject matter of the humanities. The emphasis is on teaching by example and analogy, through practicing the practice of deploying the normative sources of the law not as formulae in the production of predetermined conclusions but as resources of active legal argument, persuasion and decision-making. The aim is the cultivation of *phronesis* or practical wisdom;¹¹ in other words, nurturing the 'prudence' of the jurist. And, thirdly, as we have seen, the humanist method of legal education and scholarship, also involves exposure to and engagement in the 'master' juristic practice of doctrinal articulation, refinement and development, a productive activity and craft skill which itself is closely related to and cultivated through the teaching and learning of legal problem-solving as a first-order interpretive practice.

Yet in all these activities the mark of the service orientation remains clear. In studying law as one of the humanities we are either reflecting in the broadest sense on the place and purpose of such a specialist normative service in our common life, or we are developing the deepest skills and forms of reflection attendant upon engagement in such a service, or we are involved in a form of normative production that contributes to the very resource upon whose exploitation the service is based.

(ii) Law in the perspective of the social sciences

⁸ See e.g., W. Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge: CUP, 2009) ch.1; R. Cotterrell, 'Why Jurisprudence is not Legal Philosophy' (2014) 5 *Jurisprudence* 41-55; and see also his *The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy* ((2nd ed) (Oxford: OUP, 2009).

⁹ 'Freedom and Method'.

¹⁰ On the distinction between a deterministic 'covering-law universalism' and an open-textured 'reiterative universalism', and its applicability over a number of areas of intellectual inquiry and public culture, see M. Walzer, 'Nation and Universe' in *Thinking Politically: Essays in Political Theory* (New Haven, Yale University Press, 2007) 183-218.

¹¹ See e.g., C. Michelon, 'But to live inside the law, you must be honest' in Del Mar and Michelon (eds) above n2, 83-100; see also Z. Bankowski, *Living Lawfully* (Dordrecht, Kluwer, 2001).

That law is not a 'pure' social science is more obvious. Law is simply not a social scientific discipline. Rather, since Durkheim, it has been the object of social scientific theory and research, whether sociology, social psychology, political science, international relations or behavioural economics. Unlike the social sciences, law is not a way of understanding regularities or explaining causal relationships in the world. Instead, it supplies data to be studied to help account for or reveal these regularities and causalities. That is why we have the sociology *of* law, or of the legal profession, or the economic analysis *of* law, or a court-focused political science or international relations. Law is merely the specifier – that which defines the particular domain of social scientific study.

This generates two types of impurity, aside from the basic 'impurity' of law being the object rather than a form of social science. First, the pre-theoretical specification of something called 'law' as the focus of a theoretical discipline such as sociology or political science might seem to beg the question. One of the preliminary tasks of social science in its efforts to go beyond lay understandings of the social world is surely to apply social science techniques to deconstruct 'folk' concepts such as 'law' (or, say, 'crime' or 'the family') rather than simply accept them in their already socially mediated form as providing the relevant horizon of inquiry. The sociologist or the political scientist should be as interested in why social groups code and construct some modes of regulation or social control as law and not others, in why different social groups draw the law/non-law boundary differently, and in what regulatory modes coded on either side of the boundary might have in common, as she should be interested in whatever features those regulatory modes conventionally regarded as law might share.

Secondly, and more urgently, even if the epistemological difficulties of law's already socially constructed meaning and range can be overcome, or can be bracketed, the motivation to circumscribe the object of study in these terms (*of* law) is often connected to a tendency to accept the issue definition favoured by legal practitioners and other professionals, and by the powerful political and economic actors on whose behalf they may act. The discovery and analysis of social scientific data about law, then, may be linked to the framing and remedy of certain problems in accordance with certain conventional understandings favoured by dominant social strata. Much research in this area, in other words, is 'applied' in a quite focused sense. Often endowed with the loose generic label of 'socio-legal research' or 'empirical legal studies', its purpose to illuminate the working of certain institutions or processes of law-making, law-interpretation, law-application and law-reception with a view to their improvement in accordance with a preconceived public policy specification of what counts as a desirable

solution.¹² This applies across the range of social scientific disciplines, whether it be criminologists or sociologists of deviance addressing patterns of rule infraction in criminal organisations or their law enforcement equivalents, institutional sociologists or political scientists comparing the structure of decision-making in courts to other decision-making institutions, or law and economics scholars analysing the effectiveness of penalties and rewards as behavioural incentives in contractual and other devices of common agreement.

Again, therefore, as within the humanities research perspective, we see a service orientation very strongly at work in the social sciences perspective within legal education. In one sense, the link to the service orientation is less direct than in the case of the humanities. The socially scientifically aware jurist *borrow*s from the social sciences - from its data sets and methodologies of knowledge creation - in preparation and refinement of her practice as a creator, interpreter, or applier of legally relevant materials. The jurist with a humanities-based sensibility goes further, seeking to *incorporate* that sensibility into her basic role understanding - in particular a critically self-reflective perspective upon the kind of ethical practice law is (as expressed through its creation, interpretation and application), and how we might best contribute to that practice. In another sense, however, the service orientation is even stronger in the social sciences perspective. For to the extent that the social sciences remain other than and outside of law as forms of knowledge, this also serves to reinforce their subsidiary role. That they are merely borrowed underlines how they are seen by many as nothing more than a tool for the lawyer seeking to 'engineer'¹³ solutions to problems of human order, rather than as a perspective that might challenge the basic adequacy of our understanding of these problems, or of the basic social technologies, including law itself in some or all of its modalities, through which we address them.

(c) *Beyond the service orientation*

The prominence of the service orientation within both humanities-based and social scientifically informed conceptions of legal education generates a deep tension. If both these broader visions anticipate or respond to the inadequacies of a narrow professional conception of legal education, with its highly instrumentalised understanding of law as a client-centred

¹² The tension between a 'pure' sociology of law and applied socio-legal research has been a long-standing theme within many national academic environments. See e.g., C. M. Campbell and P. Wiles "The Study of Law in Society in Britain" in (1976) 10 *Law and Society Review* 547-78; and on the American scholarship, see C. Seron, S. B. Coutin and P. W. Meeusen, 'Is There a Canon of Law and Society?' (2013) 9 *Annual Review of Law and Social Science*, 287.

¹³ Howarth, above n3.

activity, then it is ironic, if understandable, that the fruit of these perspectives should continue to bear such a strong service imprint. Understandable, because of the defining character of law and legal expertise as a specialist form of practical knowledge, and the necessity for any scheme of legal education, however widely drawn, to acknowledge and accommodate the centrality of this practice. Ironic, because to the extent that such accommodation also encourages a basic acceptance of the existing conditions of legal practice in our society, and so of the underlying set of assumptions and arrangements that privileges the role of law and legal expertise in our frameworks of self-government, this is at odds with the sceptically inquiring attitude to any species of received knowledge we find in both the humanities and the social sciences - the very attitude which accounts for and justifies their recruitment in aid of a larger conception of legally relevant scholarship and education in the first place.

Yet, just because of this tension, we also witness a considerable and growing resistance to the service orientation - even under its more generous cross-disciplinary canopy - within legal studies and the legal academy. In part, the explanation of this trend requires its own sociology. This would make particular reference to the worldwide growth of an autonomous university-centred legal academy since the mid 20th century, and how this has encouraged a certain type of legal scholarship that assumes a greater 'critical distance' from practice, sponsoring currents of thought that challenge law's central role in the expression and reinforcement of the prevailing social order. In part, however, the explanation indicates an older vintage. For it speaks again, and more forcefully, to the deeper animating spirit behind both the humanities and the social sciences, which, as we have noted, refuses to take for granted any forms of conventional wisdom and practice on their own terms: and it recalls how this spirit has infused legal education and scholarship over a much longer period.¹⁴

This is complex terrain, and any general mapping of it is bound to oversimplify. But with that caveat in mind, we can see these alternative social and intellectual forces as producing 'critical' and 'detached' counter-orientations to the broader service approach. For both humanities-based approaches and social science approaches to legal inquiry and education have also generated certain projects and movements that are deeply critical of extant legal practice and doctrine or of the underlying general legal order, and others that stress their detachment from service concerns and the controversial value preferences associated with these service concerns.

In the case of critical approaches, there is a tradition of humanities-based philosophical work and of social scientific inquiry, in either case with strong roots in Marxist and other social

¹⁴ See e.g. Cotterrell, *The Politics of Jurisprudence*, and 'Why Jurisprudence is not Legal Philosophy', above n8.

egalitarian thought, which examines and reveals the role of law and lawyers in the production and maintenance of systems of societal domination based on class or other forms of social and economic stratification. While much of this research is either within social and political philosophy, and so clearly humanities based, or is explicitly social scientific in methodology, we also see more overlap between the two approaches than in the mainstream service orientation. Normative critique aided by the tools of moral and political theory is often joined in the one analysis with empirical accounts of law as a product of embedded power and a vessel of ideology. This becomes more pronounced as we enter the contemporary phase of critical legal scholarship; in the growth of Critical Legal Studies in the United States, which develops the more radical aspects of the legal realism of the previous generation; and in similar critical law movements in other parts of the world; and in other self-conscious forms of 'outsider jurisprudence',¹⁵ including the broad churches of feminist legal theory and critical race theory and the somewhat more contained perspectives of such research streams as queer theory or critical Latino/a theory.¹⁶ In all these cases, moreover, the critique of the mainstream academy and the reaction to its service orientation becomes more directed and more explicit than previously. Legal education in its dominant mode, even as it purports to take a more expansive approach, is still viewed as a more or less sophisticated training in professional hierarchy,¹⁷ and as a means to marginalise the broader political nature of law in favour of its reductive conception as a neutral set of skills blind to any agenda other than client needs.

If we turn to the 'detached' stream, again we can see how this connects to the deeper methodological premises of both the humanities and the social sciences. If one manifestation of their sceptical temper is a critical orientation towards their subject-matter, another is a heightened sense of dispassionate inquiry - of an intellectual endeavour not so much critical of the service orientation as insistently uncompromised by its insider commitments. This is most obviously true of the social sciences, with their lasting debt to the scientific method of disinterested observation and investigation,¹⁸ but it also characterises the search for an Archimedean vantage point of inquiry or for context-independent truths of the human condition that we sometimes find in the humanities.¹⁹ The particular motivation behind such approaches

¹⁵ M. Matsuda, 'Public Response to Racist Speech; Considering the Victim's Story' (1989) 87 *Michigan Law Review* 2320, at 2323.

¹⁶ For a good overview of CLS and associated or similar movements, see B. Bix, 'Modern Critical Perspectives' in his *Jurisprudence: Theory and Context* (6th ed) (London: Sweet & Maxwell, 2012) 235-256.

¹⁷ See e.g., D. Kennedy, 'Legal Education as Training for Hierarchy' in D. Kairys (ed) *The Politics of Law* (New York: Pantheon, 1990) 38-58.

¹⁸ See references at n12 above.

¹⁹ For discussion and critique, see R. Dworkin, 'Hart's Postscript and the Point of Political Philosophy' in *Justice in Robes* (Cambridge, Harvard University Press, 2006) 140-86.

may range from the purely epistemological - a search for a form of knowledge that escapes the bias of prior commitment, to the consciously ideological - the presentation of one's perspective as all the more intellectually privileged for somehow transcending particular concerns and limitations. And so the knowledge claims may be more or less modest. On the one hand, certain strains of so called 'descriptive'²⁰ legal positivism within legal philosophy, for example, make no evaluative claims or even 'thick' explanatory claims about the world. And certain types of empirical legal research, too, involve no commitment either to how the world should be (re) constructed or even, as a matter of broad social ontology, to how it is and could be fashioned across broad social structures, but merely limit themselves to narrowly institution-specific forms of observation and data documentation.²¹ On the other hand, certain normative projects within legal philosophy, perhaps most explicitly and ambitiously in the natural law tradition, but also within a certain tradition of legal philosophy more broadly – including the normative strain of legal positivism, involve bolder context-independent claims about the place of law in the general scheme of things and the universal or broadly generalizable qualities it might possess.²² Equally, certain more ambitious projects within the social sciences, from Weber onwards, have made very broad empirically grounded claims about the relationship of law to wider social structures, to world-historical patterns in the evolution of these structures, and as to the socially conditioned functions and limits of law more generally.²³

The lines distinguishing the service orientation from the critical and detached orientations can become blurred. Some approaches can be highly critical of prevailing patterns of legal and broader political and economic order yet still focus on ways and means of improvement.²⁴ Equally, certain detached perspectives, though motivated by an aspiration to provide disinterested knowledge, can generate insights that may be and are sometimes used by scholars and teachers whose priorities and commitments lie in the area of informing and so servicing the existing needs of the legal system. In general, however, the boundaries remain significant. Much critical literature is committed to deconstruction rather than construction, to

²⁰ See e.g. J. Waldron, *Law and Disagreement* (Oxford: OUP, 1999) 166-8

²¹ For a comprehensive overview of the wide range of contemporary empirical legal research, see P. Cane and H. Kritzer (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford: OUP, 2010)

²² For a thoughtful defence of this type of approach, see J. Gardner, 'Law in General' in *Law as a Leap of Faith* (Oxford: OUP, 2012) 270-302.

²³ M. Weber, *Economy and Society* (G. Roth and C. Wittich eds) (New York: Bedminster, 1968)

²⁴ A well-known contemporary example would be the post-Marxist critical approach of the late Frankfurt School centred around the work of Jürgen Habermas. Although deeply critical of the way in which law as a 'medium' sustains deep economic and other systemic inequalities, Habermas nevertheless also defends law, including certain concrete constitutional forms supplied by modern law, as a potentially emancipatory 'institution' - a means by which more progressive features of the cultural 'life-world' can be sustained and communicatively open democratic processes can be generated; see e.g. his *Between Facts and Norms* (W. Rehg, trans.) (Cambridge: MIT Press, 1996).

forms of challenge that would require transformation rather than amelioration of existing legal structures. And certain disinterested perspective located at the more abstract heights of analytical jurisprudence or in the broader historical tradition of the social sciences lack the purchase upon immediate patterns of law and legal thinking that would suit and facilitate a service orientation, and would resist any attempts to be invoked for these purposes

(d) Juristic fault-lines

Earlier we suggested that the responsibility of the jurist, in looking beyond a narrow client-centred conception of lawyerly practice, was to take seriously the ways in which the practice of law in its various forms was a deeply and pervasively value-relevant activity and, it follows, to take seriously the responsibility of the practicing lawyer to engage with law's broader ethical implications. In recent studies, Roger Cottrell has aptly summed up this broader aspiration as embracing a commitment to 'analysing, protecting and enhancing the *general well-being or worth of law as a practical idea*'.²⁵ Prompted by the work of the German scholar Gustav Radbruch during and after the Weimar Republic, Cotterrell proceeds to explore the contending pressures faced and the precarious balancing required in pursuit of such a role. He argues that law can be thought of from this most broadly ethically-sensitive perspective as involving a weighing amongst three separate but always contextually related values; namely justice, order or security, and orientation to a sense of overall purpose framed by different social and historical conditions. The resulting triangle is one of 'variable geometry'²⁶ in two senses. First, the relationship between the three values is fluid, with the order of priority between justice, security and social purpose altering according to circumstances. Secondly, the actual content of the social purpose value varies according to cultural context, as does the way in which this value helps shape and constrain the other values of justice and order.

Cotterrell's formulation is useful in capturing both the abiding significance of the juristic role and its perennial tensions. On the one hand, he identifies the key motivational impulse behind the juristic role, positively conceived - the striving to maintain and enable the flourishing of the idea of law as a special kind of practice. On the other hand, by placing two fundamental and universal legal values - justice and order - in a relationship of internal balance with a culturally particularistic idea of social purpose, he demonstrates why that striving can only ever deliver provisional and partial success. Provisional, because social purposes and priorities change, as does their relationship to justice and order. Partial, because in any case the

²⁵ Above n1, 510.

²⁶ *Ibid.* 516

reconciliation of certain universal and timeless values with other particular and context sensitive ones will always be incomplete, involving both epistemic doubt as to the nature and precision of the universal values and a trade-off between the competing goods these different and perhaps incommensurable orders of value – universal and particular - represent.

The tensions identified by Cotterrell in the role of the jurist are reflected in the divisions within the structure of advanced legal thought identified above. On the one hand, humanities-based inquiry tends to be more interested in the general context-independent values of justice and order, while social scientific inquiry focuses on the cultural variety of social purpose. But, as with the humanities/ social sciences distinction more generally, this is a crude and porous boundary. On the other hand, the difference in practical orientation between service, critical and detached approaches speaks to more fundamental fault-lines within the juristic guardianship of the law's well-being. The service orientation speaks to the primacy of purpose and the immediate social context. The critical orientation speaks against just that societal bias, and the law's role as a dominant expression of societal bias, often in the name of other and supposedly universal values. The detached approach may be wary of either commitment, its preference for disinterested observation and analysis a measure of its implicit or sometimes explicit²⁷ acceptance that the contending impulses within the triangle cannot be resolved - that our observation of the law and all its works can expose the tension between universal and particular in a salutary fashion but never fully overcome that tension.

3. The Jurist in a Global Age

(a) The coming of global law

Over the last half-century or so, responding to and reinforcing the growth in non-state legal forms, there has been a gradual yet cumulatively profound move away from the predominantly state-centred understanding of legal order of the modern age towards one in which transnational and global understandings of legal authority have begun to accompany and in some cases rival these state-centred conceptions. There is a massive literature on these developments, and this is not the place to explore them in detail or explain their deep causes.²⁸ Instead, what I want to do concentrate on certain features of this transformation in how law is distributed and how it is authorised that connect closely with possible changes in the juristic mind-set whose basic

²⁷ Cotterrell's own approach (n1) is one that accepts that the jurist's solution will ultimately be societally-specific, but also one that continues to operate from a disinterested perspective which recognizes and seeks to emphasize the contingent nature of any such solutions

²⁸ See e.g. Twining, above n8; see also N. Walker *Intimations of Global Law* (Cambridge: CUP, 2015).

structure we have set out, and on the shifting educational and research priorities associated with these changes.

In other work I have sought to focus on one aspect of the move away from a state-centred conception of legal order which does not seek to capture all aspects of post national law in its kaleidoscopic variety, but which nevertheless seems to go to the heart of what is distinctive about the new post-state phase and about the role of the academy in this.²⁹ My point of departure has been to investigate a deeper commonality beneath the variety that is present at the increasingly popular semantic surface of 'global law' (and its functional equivalents). In so doing I have sought to define global law as one particularly developed and significant sub-set of transnational law, embracing *any practical endorsement of or commitment to the universal or otherwise global-in-general warrant of some laws or some dimension of law*.³⁰

The emphasis on a universal or at least global-in-general warrant is intended to convey the idea of a jurisdictionally unbound law; it is one that knows no direct or indirect (e.g., through citizenship) territorial limits but is instead, within its own material remit, planetary in extension. The 'globality' of global law, then, does not depend upon source or pedigree, but upon intended destination. Global law may be produced at the global institutional level (e.g., The United Nations) or in global conventions of rule formation (e.g., general international law), but it may equally be posited at the national or other local or site-specific level through notions such as 'universal jurisdiction'; or, more commonly, it may be found in the cross-site acknowledgment and development of a shared body of doctrine or general legal world-view. In this broad perspective, we can point to a large number of contemporary trends under the auspices of global law.

Global law so defined, whether explicitly so-called or implicitly understood as such, involves various different ways of imagining - and indeed *imaging* - law on a global scale as somehow 'containing' and shaping a more expansive domain of national and transnational legal variety. Global law, therefore, in its jurisdictional generality never operates in isolation, but always 'acts upon' other laws in their jurisdictional particularity and diversity. We may group these different approaches to global law, depending upon how they treat that underlying world of legal variety, into either *convergence-promoting* approaches or *divergence-accommodating* approaches.³¹

The convergence-promoting approaches cover both *structural* and *formal* extensions of public international law beyond the traditional picture of a merely 'transactional' law of

²⁹ Walker, above n28.

³⁰ *Ibid.* 18.

³¹ *Ibid.* ch.3

voluntary obligations between states. These candidates for global law are exemplified, respectively, by a UN Charter-centred institutional hierarchy sharpened through a non-consent based and so globally pervasive use-of-force capacity, and by the reconceptualization of international law as a formally integrated, state-consent-independent planetary legal system complete with general principles, obligations *erga omnes*, *ius cogens* etc. In both cases the prevailing juridical image is one of a *pyramid*. Also within the convergence-accommodating basket we find a variety of *abstract-normative approaches*. These range from general doctrinal perspective, such as a global human rights catalogue with (all) persons rather than states as ultimate legal subjects, to pre-positive or proto-positive framing ideas - such as, the cosmopolitan guiding principles (e.g. accountability, participation, public reason, subsidiarity, human rights protection), identified by various commentators,³² or the neo-Habermasian notion of a universal code of legality,³³ or various recent formulations of a global rule of law.³⁴ Here the defining image is of the container, either the over-container or *umbrella* of abstract doctrine or principle or the under-container or *vessel* of pre-positive common code.

The divergence-accommodating perspective includes *laterally coordinate approaches* such as the emergence of a new global 'law of conflicts'³⁵ through broader non-state centred inter-jurisdictional choice of law processes and mechanisms in what was traditionally called 'private international law', as well as the plethora of new transnational constitutional and other legal pluralisms. The image here is of links in a vertical *chain* - of thin principles of mutual accommodation between different legal orders³⁶ Another divergence-accommodating approach focuses on those *functionally specific regimes* concerned with thematically circumscribed public goods in which the entire planet is the relevant community of risk or fate, as is gradually and unevenly emergent in areas such as climate change, migration and nuclear non-proliferation. The image here is of the *segment* - the slice or section of which presupposes a global whole but, rather than looking for a common legal theme across the whole, is concerned

³² See e.g., M. Kumm 'The Cosmopolitan Turn in Constitutionalism' in Dunoff and Trachtmann (eds) *Ruling the World* (Cambridge: CUP, 2009) 258-325; R. Domingo *The New Global Law* (Cambridge: CUP, 2010).

³³ Developed by Klaus Gunter; see e.g., 'Legal Pluralism or Uniform Concept of Law?' (2008) 5 *Journal of Extreme Legal Positivism* 5

³⁴ See e.g., G. Palombella, 'The (re)Constitution of the Public' in C. MacAmhlaigh, C. Michelon and N. Walker (eds) *After Public Law* (Oxford: OUP, 2013) pp.286-310.

³⁵ See e.g., C. Joerges, P. F. Kjaer and T. Ralli, 'A New Type of Conflicts Law as Constitutional Form in the Postnational Constellation' (2011) 2 *Transnational Legal Theory* 153; H. Muir Watt, 'Private International Law Beyond the Schism' (2011) 2 *Transnational Legal Theory* 347.

³⁶ See e.g. N. MacCormick, *Questioning Sovereignty* (Oxford: OUP, 1999), N. Walker, 'The Idea of Constitutional Pluralism' 65 *Modern Law Review* 315 (2002), N. Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford: Oxford University Press, 2010)

with only one section of that whole.³⁷ In addition, there is a further divergence-accommodating approach to global law involving the merger of existing legal fields into new hybrids or composite fields. These include the so-called new 'law of peace'³⁸ or 'humanity's law',³⁹ both models involving a fresh mix of international criminal law, human rights law and other cognate elements to provide a new conception of global justice in the area of conflict resolution. They also include the new global 'law of recognition',⁴⁰ vastly extended from the traditional state-centred international law of recognition to cover the dignitarian and participation dimensions of recognition for all active contemporary global constituencies, women, racial and religious minorities etc., previously denied them. Again, in all these framing initiatives, what is striking is the movement beyond the boundaries of international law as inter-state law, or indeed constitutional law as intra-polity law, in search of a warrant which is genuinely global in its deep justification and in its jurisdictional reach. The image here is of law as *flow*, of a series of tributaries merging into a wider but still clearly embanked global legal river. In all cases, those who coin the relevant term are seeking to capture and reinforce what they already understand as an incipient trend.

A final group of global approaches to law also suggests a fluid movement, though here the idea of a common historical *thread* is key. These include themes such as global constitutional law or Global Administrative Law,⁴¹ and revived interest in the concepts of *ius commune* and *ius gentium*,⁴² Rather than hybrids of disparate trends, however, these are merely adaptations of a venerable legal discourse to the new global stage. These tend, moreover, to be highly open-ended, capable of being either convergence-promoting or divergence-accommodating, and so overlapping heavily with the approaches already mentioned. For example, global constitutionalism can focus on the convergence-sponsoring 'global constitution' of the UN, but equally on the thin inter-systemic links of constitutional pluralism, or on Gunther Teubner's functionally segmented 'societal constitutionalism' in which the regulatory world is divided up into a series of self-contained spheres (sport, science, the internet etc.) each with its own profoundly different steering logic.⁴³ Here the idea of global law reaches its limit of open texture, the common language as much a cue for disputation as the trace of a

³⁷ Walker, above n28, 118-125.

³⁸ C. Bell, *On The Law of Peace: Peace Agreements and the Lex Pacificatoria* (Oxford: OUP, 2008)

³⁹ R. Teitel, *Humanity's Law* (Oxford: OUP, 2011)

⁴⁰ E. Tourme-Jouannet, "International Law of Recognition" (2013) 24 *European Journal of International Law* pp.667-690

⁴¹ See, e.g., the signature article by B. Kingsbury, N. Krisch and R.B. Stewart, 'The Emergence of Global Administrative Law' (2005)68 *Law and Contemporary Problems* 15.

⁴² J. Waldron, *"Partly Laws Common to All Mankind": Foreign Law in American Courts* (New Haven: Yale University Press, 2012)

⁴³ See e.g., G. Teubner *Constitutional Fragments* (Oxford: OUP,2012)

common code. It remains remarkable, however, that the common term of trade in this context of disputation remains law's potentially *global* warrant.

In all of these variants global law emerges in response to questions about the uncertain basis of legal authority in a world in which the 'box matrix' of mutually exclusive state sovereignty no longer provides a sufficient or even dominant meta-authoritative global principle and guide. In all spheres of social and economic life, globalisation, with its unprecedented compression of time and space and connection of far-flung processes and events,⁴⁴ creates and amplifies new territorially unbounded commonalities and also new territorially unbounded differences in respect of interests, identities and values. Law is no exception. Each of the global law models purports to answer to the ways in which transnational law, by introducing regimes and patterns of law that are non state-centred or state-contained - typically in response to the intensification of political, military, economic or cultural forces that are similarly state-uncontained - unleashes and places in dynamic tension new patterns of legal commonality and difference. Both convergence-promoting approaches and divergence-accommodating approaches to global law, as already noted, set out in their different ways to contain and re-order 'unruly' elements in the transnational mix. They do so whether by focusing on continuity, unity and hierarchy, and advancing new forms of universal or general normative leverage, as in convergence-promoting approaches; or by focusing on difference, particularity and heterarchy, and so either connecting or delimiting the transnational fragments, as in divergence-accommodating approaches. In so unfolding, they may supplement one another, but equally, as in the relationship between the new legal cosmopolitanism and the new legal pluralism, or between a single post-international global legal order and globally segmented and fragmented regimes, they may challenge and provoke each other in a relationship of productive tension.

Global law, then, involves the development of new if typically less pervasive meta-principles that challenge and moderate rather than replace the previously dominant meta-principle of state sovereignty. They do so by reframing and refashioning existing and emergent doctrinal and institutional tendencies in ways that are appropriate to the increasingly dense planetary interdependence of legal jurisdiction and regulatory purpose. These different conceptions of global law, with their various images of the legal world - pyramid, umbrella, vessel, chain, segment, flow and thread - stand in a complex and shifting relationship, one that is as much about complementarity as conflict and in which there is no prospect of final settlement.

⁴⁴ See e.g. A. Giddens, *The Consequences of Modernity* (Stanford: Stanford University Press, 1990)

(b) Situating the Global Jurist

A number of points stand out from this brief sketch of forms of global law as particularly significant for our understanding of the role of the jurist in a global age, and of what this implies for the place of legal education and research. In the first place, and most basically, if the jurist should be concerned about the general well-being of the law, then a legal education fit for a jurist must take close account of the new interdependencies of transnational and global law set out above. While it has never been the case that a lawyer could satisfy his juristic conscience by attending only to the domestic legal order and its ethical underpinnings, but was required also to be curious about the nature and effects of international law and the example of other legal orders, the need to look beyond the local is now more palpable. The jurist of the global age must perforce be interested in the rich diversity of transnational law, in the national legal orders with which transnational law interacts, and in the ways in which the universal or general claims of an increasingly influential body of global law draw upon different legal, ethical and philosophical traditions. The jurist of the global age must, therefore, engage in 'general jurisprudence' in the sense captured by William Twining, namely the study of the whole range of 'legal traditions, cultures, or orders...from the micro-comparative to the universal'.⁴⁵

Secondly, the jurist in the global age also has a much more specific and active role to play in the generation and justification of the new legal forms we associate with global law. As we have noted, the jurist has always been involved in the production of the very material that is also the object of analysis. This role is amplified in the new global context. In part, the explanation for this is matter of occupational sociology. Generally speaking, there is a much greater continuity and much greater fluidity of role specification and professional organisation within what we may call the community of 'global law-craft'⁴⁶ between practitioners and scholars than one finds in the typical national context. Lacking the prominent and well-embed official casting of the typical national system, the potential for role ubiquity and versatility within the global system, and for elite networking across the range of roles, is far greater. Executive, judicial, arbitration and advisory roles are more likely to overlap or be severally pursued; professional and scholarly elites are more likely to intermingle and to be engaged in the same fora, networks and associations, and to speak to the significance of the same globally ramified legal events.

⁴⁵ Twining, above n8, 20-21

⁴⁶ Walker, above n28, 45-47.

However, this sociological shift is also in some measure merely a reflection - and reinforcement - of a deeper factor explaining the greater involvement of the jurist in the production of global law. For it is precisely the unsettled quality to which global law responds and which it in turn displays - the erosion of taken-for-granted frameworks of legal authority, which offers the global jurist an expanded jurisgenerative role. As we have seen from the catalogue of global law, the academic community are often the map makers and symbolic entrepreneurs of the new legal globality, and so are heavily implicated in the naming and framing. In some cases, as my definition suggested, the global law model is more about 'commitment' than 'endorsement,' projection than refinement, construction than reconstruction, and in these areas, such as global constitutionalism, Global Administrative Law, many of the abstract normative approaches, global legal pluralism and the new global hybrids, the academic community is particularly to the fore. In other cases, for example the structural and formal models, or the functionally specific global regimes, it is much more a question of the incremental extension and retailoring of existing practice, but even here the scholarly community is much involved in the work of persuasive adaptation. Global law is never either purely speculative nor disinterestedly descriptive; it always has an element of 'practical' engagement, even if this may be at some level of abstraction from recognised doctrine (hence the definitional reference to 'some laws' or to 'some dimension of law'), and, indeed, is often as much concerned with the framework of authority required for the articulation of that doctrine than the content of what is articulated. But even in its more concrete forms, it remains in a process of fluid and, of course, normatively contested becoming - of 'intimation'⁴⁷ rather than final resolution.

The pervasiveness and versatility of juristic involvement in the making of global law leads to a third key point. In the developing profile of the global lawyer, both humanities and social scientific perspectives are important, often in fluid combination. On the one hand, it is striking how much the development of the new global law draws upon aspects of our legal heritage, whether from or before the state-centred modern age.⁴⁸ The tradition of constitutional law, administrative law, human rights law, *ius gentium* and much more is examined as a set of resources for a new age. Ironically, it is the erosion of the specific and direct authority of many of these legal frameworks that has led to their reappraisal as a reservoir of normative suggestion. But in all of this, we see the methods and deep purpose of the humanities very much at work. We witness at an intense level of engagement the attempt to understand and refine our capacity

⁴⁷ *Ibid.* ch.5.

⁴⁸ *Ibid.* ch.5, 151-157.

for law's special form of practical reason by reference to the deep record of our past practice and past reflection on that practice.

On the other hand, the development of the new global law is also about our ability to extrapolate from the present and to understand the trends taking place in transnational legal development. A project such as Global Administrative Law for example, or the refinement of the idea of 'proportionality' as a judicial meta-value for a variety of transnational contexts, or the spread of rights 'mainstreaming', or the revival of the Rule of Law as an ethic of global relevance, requires a capacity to understand incipient movements in the global legal landscape - their causes, mobilising potential and long-term effects - that draws heavily on social scientific knowledge and sensibilities. And at the outer edges of this movement, we also see the growth of a kind of 'emergent analytics'⁴⁹ in international and transnational law. Here we find bodies of research on compliance or collective learning in which 'real world' testing is closely linked to regulatory adaptation, and so where trend-spotting becomes of directly normative as well as diagnostic value.⁵⁰ In all of these cases, the emphasis on regulatory projection acknowledges and underlines the tenuous authority of some of our legal traditions but also provides the focus for normative renewal. In many cases, moreover, the creative interpretation and refinement of fluid trends continues to draw on our inquiries into our heritage tools of legal design in a manner that requires a close blend of humanistic understanding and social scientific awareness.

A fourth and final key point returns us to the fault-lines we identified between service, critical and detached orientations towards legal practice in the state-centred juristic mind-set, and considers how the new global environment might affect these. Does the somewhat greater creative engagement and productive involvement of the jurist on the global stage suggest some way of moving beyond these fault-lines? Some might prefer to highlight the opposite danger. They might see the mingling of scholarly voice and institutional fact as tending towards confusion – even an illegitimate collapsing – of theory and doctrine. Yet it is important to understand the inevitability of the jurist's implication in the process of imagining and framing

⁴⁹ G. Shaffer and T. Ginsberg, 'The Empirical Turn in International Legal Scholarship' (2012) 106 *American Journal of International Law* 1. See also Walker, above n28, 157-62.

⁵⁰ Perhaps the most developed example of this is the experimental governance movement, or tendency. Tellingly, this has achieved notable success in those transnational contexts where the basis of legal authority is particularly tenuous; See, e.g., C. Sabel and J. Zeitlin (eds.), *Experimentalist Governance in the European Union: Towards a New Architecture* (Oxford: Oxford University Press, 2010). On experimentalism in the US see, e.g., M. Dorf and C. Sabel, 'A Constitution of Experimentalist Governance' 98 *Columbia Law Review* 267 (1998); C. Sabel and W. Simon, 'Minimalism and Experimentalism in American Public Law' 100 *Georgetown Law Review* 53 (2011). On experimentalism in the EU, see K. Armstrong, 'The Character of EU Law and Governance: From 'Community Method' to New Modes of Governance' 64 *Current Legal Problems* 179 (2011).

global law. Jurists by definition lack political or democratic authority to decide the frameworks of our common life; this is sometimes forgotten, but it is as true in the national as in the transnational setting. Yet in the non-state setting the more prominent framing role that jurists are gradually assuming is precisely due to the growing complexity of our thick transnational interdependence and *the absence* of mechanisms that provide or would generate political and democratic authority structures to resolve the terms of that thick interdependence. Jurists, then, have no choice but to get involved – to address hard questions about our ‘disorder of orders’⁵¹ that will not go away just because no-one has clear standing to answer them. But if the authority of jurists is situationally-contingent, and mostly epistemic - based upon their legal knowledge and know-how, then they have a responsibility to employ this as fully and with such serious regard for the well-being of law as possible.

There can be no place, here, for a narrowly self-interested or conceited service orientation, for championing the role of lawyers and the place of lawyers just because of who we are, the happenstance of our involvement at so many of the dense regulatory intersections of transnational law, and the pull of our insider knowledge. Equally, however, so fluid are the dynamics of transnational law that such detachment as we can bring to the task of understanding where we are in legal terms is unlikely to remain in the realm of disinterested observation. The very circumstance of law’s involvement in the process of globalisation militates against the kind of inquiry that seeks universal or long-term juridical truths that somehow stand above the fray. Rather, as we have seen, the emphasis is upon the emergent and the disjunctive, on forms of humanistic reflection or social scientific understanding that capture trends and subject them to forms of creative interpretation and refinement that will unavoidably be in competition with other such constructive efforts.

What is more, within the perspective of global law the distinction between these first two approaches – service and detached – and the critical approach, also becomes less apparent. This is not deny the profound gap that lies between the present possibilities of global law - and so to the service we might provide to its existing forms - and some people’s ideas of global economic or political justice.⁵² Rather, it is to acknowledge that however far removed the art of the possible remains from certain conceptions of the global good, a concern with global justice is already built into the reflexive development of global law. For in responding to the decline of a historically dominant meta-principle of legal authority, and the absence of any functionally equivalent steering mechanism, global law in its various forms, both convergent and divergent,

⁵¹ N. Walker, ‘Beyond Boundary Disputes and Basic Grids: Mapping the Global Disorder of Normative Orders’ (2008) 6 *international Journal of Constitutional Law* 373-96.

⁵² Walker, above n28, ch.6; see also S. R. Ratner, ‘Ethic and International Law: Integrating the Global Justice Project(s) (2013) 5 *International Theory* 1.

tends already to look more explicitly to general ethical principles and purposes in search of a legitimate grounding for its authority. The gulf between critique and the tracking of the authoritative pathway for a transformative legal practice is often deemed unbridgeable in a state-centred critical literature that may view existing authority structures as inimical to root and branch reform. Yet that chasm is considerably narrowed in an environment where all existing frameworks of authority are seen as incomplete or unsettled, and where the very conceptualisation and design of new framework of authority and new ways of imagining the legal world is seen as no-one's special prerogative.

4. Conclusion

We should be careful not to overstate the significance of the effects of globalisation on the juristic mind-set, or on our sense of how legal education and research might alter in consequence. Much of legal education, and much of the debate over what it is or for the legally educated to be concerned with law's well-being, remains within the boundaries of the state - which remains of key importance if not the monopolistic institutional player of old in a global legal age.⁵³ Those of us who are persuaded, as I am, that law's contemporary transnational movement is nevertheless one of profound scale and importance, with significant consequences for legal education and the role of the jurist in general, will feel that there remains a relative neglect of the world beyond the state - a lag in awareness and so inadequate appreciation in legal educational circles of what a proper understanding of law's global horizons requires. Yet we should also recognise that just because law is a practice, and just because the organisation and pursuit of that practice remains predominantly local in its immediate context and consequences, there are good reasons why the local domain should also continue to be the primary point of reference of legal education for many.

But even if the global dimension remains secondary, and even if we (reasonably) disagree about how prominent it should be or become, its inclusion in the curriculum as one level of inquiry is likely to have a broader salutary effect. For one supplementary consequence of its closer embrace may be to spread a greater awareness of the general responsibilities and opportunities of jurists. however we may situate ourselves. Wherever we might be located, and

⁵³ See e.g. P Glenn, *The Cosmopolitan State* (Oxford: OPU, 2013).

at whatever geographical level our priorities of involvement lie, exposure to the tensions, opportunities and dangers of global law should remind us that our engagement with the law *qua* jurists require us to have more than a basic knowledge of the professional tools of the trade, and should reinforce to us how much we stand to benefit from greater cross-disciplinary awareness. Such exposure should also caution us that detachment, whatever its many virtues, cannot provide refuge from the hardest questions about the well-being of law, and that we should strive to face these hard questions in a manner that does not treat commitments to service and to critique as mutually exclusive.